

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

United States,

Plaintiff

v.

David Reyes-Zepeda,

Defendant

2:13-cr-00078-JAD-VCF

**Order Denying Motion for Sentence  
Reduction**

[ECF 50]

On November 25, 2013, I sentenced David Reyes-Zepeda to the mandatory statutory minimum term of 60 months in prison after he pleaded guilty to one count of possession of a firearm during a crime of drug trafficking.<sup>1</sup> Reyes-Zepeda, now pro se,<sup>2</sup> moves for a sentence reduction under 18 USC § 3582(c)(2), which authorizes a district court to modify an imposed sentence “in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . .”

A sentence reduction under § 3582(c)(2) requires a two-step inquiry.<sup>3</sup> First, the court must determine if the guideline for the defendant’s offense was lowered post-sentencing. If so, the court must then determine whether a reduction is warranted by the § 3553(a) sentencing factors.<sup>4</sup> Reyes-Zepeda argues that he is entitled to a reduction based on Amendment 782 to the United States Sentencing Guidelines, which became effective almost one year after Reyes-Zepeda was sentenced

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<sup>1</sup> ECF 48.

<sup>2</sup> The federal public defender’s office successfully moved to withdraw as Reyes-Zepeda’s attorney after indicating that it would not be filing a motion or application to reduce sentence on his behalf. ECF 53, 54.

<sup>3</sup> *United States v. Dunn*, 728 F.3d 1151, 1155 (9th Cir. 2013).

<sup>4</sup> *Id.*

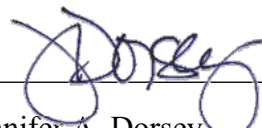
1 and applies retroactively to previously sentenced defendants.<sup>5</sup> Amendment 782 reduced by two  
2 levels some, but not all, of the base offense levels in the Drug Quantity Tables in U.S.S.G. §§ 2D1.1  
3 and 2D1.11.

4 Reyes-Zepeda is not eligible for a sentence reduction because Amendment 782 did not affect  
5 his sentencing range.<sup>6</sup> I sentenced Reyes-Zepeda to the mandatory minimum term of 60 months in  
6 prison for the gun charge, and all other charges against him were dismissed.<sup>7</sup> Because Amendment  
7 782 did not revise Reyes-Zepeda's statutory mandatory minimum guideline, he would receive the  
8 same mandatory five-year term even if he were sentenced post-amendment, so he is not eligible for a  
9 sentence reduction.<sup>8</sup> Because Reyes-Zepeda is not eligible for a sentence reduction, I need not  
10 consider whether the § 3553 sentencing factors warrant that relief.

### 11 Conclusion

12 Accordingly, IT IS HEREBY ORDERED that defendant's motion for a sentence reduction  
13 **[ECF 50] is DENIED.**

14 Dated April 4, 2016

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16 \_\_\_\_\_  
17 Jennifer A. Dorsey  
18 United States District Judge  
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22 <sup>5</sup> U.S.S.G. §§ 1B1.10(d), (e)(1).

23 <sup>6</sup> See 18 U.S.C. § 924(c)(1)(A)(I) (still requiring a mandatory minimum term of five years'  
24 imprisonment).

25 <sup>7</sup> ECF 48.

26 <sup>8</sup> District courts have "no authority to reduce a sentence" under 18 U.S.C. § 3582(c)(2) when the  
27 defendant is sentenced to the statutory mandatory minimum and that mandatory minimum is not  
28 affected by an amendment to the Sentencing Guidelines. *United States v. Paulk*, 569 F.3d 1094,  
1095 (9th Cir. 2009).